Supreme Court, U.S.
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No. 86-141

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1986

RALPH J. PETROZIELLO,
Petitioner,

V.

COMMONWEALTH OF MASSACHUSETTS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF THE COMMONWEALTH OF MASSACHUSETTS

BRIEF OF THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

1. Whether the Interstate Agreement on Detainers requires the dismissal of pending indictments when a receiving state returns the prisoner to the sending state without having disposed of all the indictments pending against the prisoner in the receiving state?

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Respondent is not dissatisfied with petitioner's statement of opinions below.

JURISDICTION

Respondent contests petitioner's claim of Jurisdiction and will argue that the Court lacks jurisdiction to grant certiorari.[1/]

REASONS FOR NOT GRANTING THE WRIT

I. BECAUSE THE DECISION BELOW IS NOT A FINAL JUDGMENT WITHIN THE MEANING OF 28 U.S.C. §1257, THIS COURT LACKS JURISDICTION.

On October 10, 1979, the petitioner was indicted for first degree murder and armed robbery in Suffolk County. On May 10, 1984 the petitioner filed a motion to dismiss the Suffolk indictments on the ground that the prosecution was barred by the Interstate Agreement on

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1/ Respondent assumes that petitioner's invocation of jurisdiction under 28 U.S.C. §1259 (Petition, 3) is a typographical error and that petitioner intended to invoke jurisdiction under 28 U.S.C. 1257.

Detainers. The motion was denied. (Findings of Fact and Rulings of Law on Defendant's Motion To Dismiss, A-1). The case was reported to the Appeals Court prior to trial (A-31). The Appeals Court affirmed. Commonwealth v. Petroziello, (A-22). On May 30, 1986, the Supreme Judicial Court denied Further Appellate Review.

This Court's jurisdiction to review a state court decision is limited generally by statute, 28 U.S.C. §1257, to a final judgment rendered by the highest court of the State. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 476-477 (1975). In the context of a criminal prosecution a final judgment is a sentence. Parr v. United States, 351 U.S. 513, 518 (1956); Berman v. United States, 302 U.S. 211, 212

(1937). Here there has been no adjudication of guilt and no sentence imposed, thus no final judgment.

Moreover, this case does not fall within any of the four catagories of exceptions to the rule described in Cox, supra.

This case clearly does not fall within the first category of exceptions delineated by the court since the federal claim advanced here is not conclusive of the case. Compare Mills v. Alabama, 384 U.S. 214 (1966) (since the defendant had conceded violation of a statute whose constitutionality had been upheld by highest state court, trial would be merely a formal "gesture" leading inevitably to a conviction. Here, no such "practical finality" could be asserted on the record in this case.

The second category of exceptions involves cases in which the federal issue will survive regardless of the outcome of the future state-court proceedings. See e.g. Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945). Brady v. Maryland, 373 U.S. 83 (1963). Here, acquittal will moot the issue.

The third category of exceptions is equally inapplicable. If petitioner is convicted, he is not precluded from then raising his claim in this Court.

The fourth category of exceptions does not offer relief to petitioner for, while reversal of the judgment below might well preclude further proceedings in the state court, the second-prong of the test is not met i.e. "failure to consider the state court decision

immediately will not "seriously erode federal policy". No substantive federal right is involved in the instant case. The Interstate Agreement on Detainers is but a procedural mechanism designed to encourage the expeditious and orderly disposition of pending criminal charges. See Carchman v. Nash, __ U.S.___, 105 S.Ct. 3401 (1985). No substantive rights such as the right to a speedy trial or the prohibition against being twice placed in jeopardy is implicated in the instant case. The alleged technical, mistaken, violation of the IAD-committed by a prosecuting authority independent of the Suffolk County District Attorney's Office does not, it is submitted, undermine an important or fundamental federal

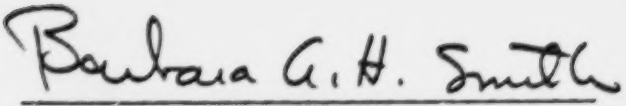
interest. See Fasano v. Hall, 615 F.2d 555 (1st Cir. 1980). Therefore, the petition should be denied for want of jurisdiction. Flynt v. Ohio, 451 U.S. 619 (1980).

CONCLUSION

For the reason stated above the petition for writ of certiorari should be denied.

Respectfully submitted,

FRANCIS X. BELLOTTI
ATTORNEY GENERAL



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